Supreme Court, U.S.
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No. 92-985

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

MICHAEL R. GOLAND,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITIONER'S REPLY BRIEF

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The Solicitor General's Brief in Opposition attempts to convert the substantial constitutional question presented in our Petition into a narrow issue of statutory construction. But the issue for this Court is not, as the government would have it, whether or not the jury could reasonably have concluded that Mr. Goland's expenditure was a "contribution" within the meaning of the Federal Election Campaign Act of 1971. Rather, the question presented in

Mr. Goland's petition is, more fundamentally, whether — regardless of how the Federal Election Campaign Act may be read — the First Amendment will countenance the prosecution of an individual who independently and anonymously writes, pays for, produces and airs a political commercial *solely because he uses a minor splinter-party candidate as an actor.* In our view, such a prosecution is inconsistent with both the letter and the spirit of *Buckley v. Valeo*, 424 U.S. 1 (1976) — particularly where, as here: (1) none of the sponsor's money went to or through the actor-candidate or his committee; (2) all decisions about what the commercial would say, who would say it, and when and where it would air were made by the sponsor alone; and (3) the actor-candidate was unaware of the identity or political views of the anonymous sponsor and plainly would have refused to participate had he known either.

To be sure, substantial additional questions exist as to whether the statute itself was technically even violated in this case — for example, whether the Committee to Elect Ed Vallen to the U.S. Senate was an "authorized committee" as of the date the commercial was purchased, [1] or whether under the circumstances Mr. Vallen could properly be said to have "cooperat[ed]" or "consult[ed]" with someone he did not even know existed, whose views he despised, and who was using him purely as an actor to advance his own political agenda. On these questions, Petitioner submits, the rule of

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[1] In arguing that whether or not the Vallen Committee was an "authorized committee" at the time the commercial was aired is irrelevant because the law also prohibits contributions to any "candidate" (Br. Opp. at 10), the Solicitor General ignores a critical point: the indictment charged Mr. Goland with having made an excessive contribution to the Committee to Elect Ed Vallen to the U.S. Senate, not to Mr. Vallen, and the jury was so instructed.

lenity, which applies with special force in cases involving core First Amendment rights, should have insulated Mr. Goland from criminal conviction. *Dunn v. United States*, 442 U.S. 100, 112-13 (1979).

It is not these statutory questions, however, that the Petition principally raises. At the time *Buckley* was decided, the FECA took no account of "independent expenditures" at all. The current statutory exception is Congress' attempt to codify *Buckley*'s constitutional dictate. This case raises the question whether, as applied to the circumstances of this case, it has fully and faithfully done so.

Respectfully submitted,

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